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**DONELAN, CLEARY, WOOD & MASER, P.C.**

ATTORNEYS AND COUNSELORS AT LAW  
SUITE 750  
1100 NEW YORK AVENUE, N.W.  
WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500

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September 6, 1995

8479-H4Z

SEP 6 1995 1:11 PM

Honorable Vernon A. Williams  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Secretary Williams:

Enclosed for recordation, under the provisions of 49 U.S.C. §11303(a) and the regulations thereunder, are executed counterparts of two secondary documents, not previously recorded as follows: (1) Novation Agreement ("Agreement"), dated as of July 24, 1995, by Hercules Incorporated, as Transferor/Lessee, Montell USA Inc., as Transferee/Lessee, and The CIT Group/Equipment Financing, Inc., as Owner/Lessor; and (2) Amendment No. 1 dated as of July 24, 1995 ("Amendment") to Lease of Railroad Equipment, dated as of September 1, 1976 as modified by the Lease Addendum dated as of January 14, 1977 ("Lease") between Montell USA Inc. (formerly known as Himont U.S.A. Inc. and assignee of Hercules Incorporated), as Lessee, and The CIT Group/Equipment Financing, Inc., (assignee of BOT Financial & Leasing Corporation B-3 (formerly known as New England Merchants Leasing Corporation B-3)) as Owner/Lessor.

The names and addresses of the parties to the enclosed documents are as follows:

**Novation Agreement**

- |                   |   |  |
|-------------------|---|--|
| Transferor/Lessee | - | Hercules Incorporated<br>Hercules Plaza<br>1313 North Market Street<br>Wilmington, Delaware 19894-0001 |
| Transferee/Lessee | - | Montell USA Inc.<br>2801 Centerville Road<br>P.O. Box 5439<br>Wilmington, Delaware 19850               |
| Owner/Lessor      | - | The CIT Group/Equipment Financing, Inc.<br>1211 Avenue of the Americas<br>New York, New York 10036     |

**Amendment No. 1**

- |        |   |  |
|--------|---|--|
| Lessee | - | Montell USA Inc.<br>2801 Centerville Road<br>P.O. Box 5439<br>Wilmington, Delaware 19850 |
|--------|---|--|

RECEIVED  
OFFICE OF THE  
SECRETARY  
SEP 6 1 08 PM '95  
LICENSING BRANCH

Counterparts - Jm. Mas



**Interstate Commerce Commission**  
Washington, D.C. 20423-0001

9/6/95

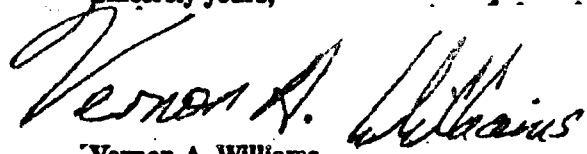
**Office Of The Secretary**

John K. Maser III  
Donelan, Cleary, Wood & Maser, PC.  
1100 New York Avenue, NW., Ste. 750  
Washington, DC., 20005-3934

**Dear Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 9/6/95 at 1:15PM, and assigned recordation number(s). 8479-H and 8479-I.

Sincerely yours,

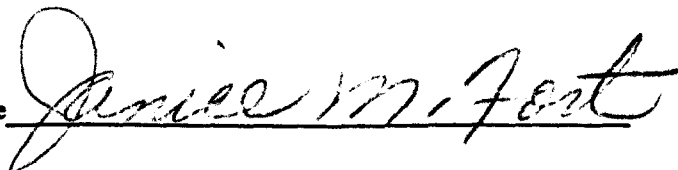
  
Vernon A. Williams  
Secretary

**Enclosure(s)**

(0100761040)

\$ 42.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

**Signature**



8479-H  
RECORDATION NO. FILED

**NOVATION AGREEMENT** SEP 9 1995 1:10 PM

INTERSTATE COMMERCE COMMISSION

**THIS NOVATION AGREEMENT (this "Agreement") is made and entered into as of July 24, 1995, by HERCULES INCORPORATED, a Delaware corporation ("Transferor"), MONTELL USA INC., a Delaware corporation ("Transferee") and THE CIT GROUP / EQUIPMENT FINANCING, INC., a New York corporation ("Owner").**

**WITNESSETH:**

**WHEREAS, Transferor is the lessee under that certain Lease of Railroad Equipment dated as of September 1, 1976 as modified by the Lease Addendum dated as of January 1, 1977 (together, hereinafter the "Lease") between Transferor and Owner as assignee of BOT Financial & Leasing Corporation B-3 (formerly known as New England Merchants Leasing Corporation B-3);**

**WHEREAS, Transferee is the sublessee of all Equipment subject to the Lease under that certain Railcar Subleasing Agreement dated as of November 1, 1983 between Transferor and Transferee (the "Sublease");**

**WHEREAS, the Units currently subject to the Lease and the Sublease are set forth in said Schedule "A";**

**WHEREAS, the Lease of Railroad Equipment dated as of September 1, 1976 was recorded at the Interstate Commerce Commission on September 15, 1976 at 2:10 p.m. under Recordation No. 8479; the Lease Addendum dated as of January 1, 1977 was recorded at the Interstate Commerce Commission on January 24, 1977 at 10:00 a.m. under Recordation No. 8479-D and that certain Assignment and Assumption Agreement dated as of May 31, 1995 between BOT Financial & Leasing Corporation B-3 and Owner was recorded at the Interstate Commerce Commission on May 31, 1995 at 3:00 p.m. under Recordation No. 8479-G;**

**WHEREAS, Transferor desires to be released and discharged from the obligations enumerated in the Lease and Transferee agrees to perform all of the obligations of and be bound by the terms of the Lease, all subject to the terms and conditions herein; and**

**WHEREAS, Owner is willing to release Transferor from all obligations of the Lease, provided Transferee agrees to perform the obligations and be bound by the terms of the Lease, all subject to the terms and conditions herein;**

**NOW THEREFORE, in consideration of the premises, and the mutual covenants and agreements herein contained, and subject to the terms and conditions herein set forth, the parties hereto agree as follows:**

**1. Definitions. Capitalized terms used but not defined herein shall have the meanings specified in the Lease.**

**2. Substitution of Transferee for Transferor. Transferee hereby assumes all rights and obligations (excluding Excluded Obligations) of Transferor under the Lease and agrees to be bound by all of the terms of the Lease. Transferee acknowledges its obligations under Section 7 of the Sublease and agrees that the obligations accrued under such section during the period commencing on November 1, 1983, and terminating on the date hereof shall continue and survive the termination of the Sublease pursuant to Section 4 (b) hereof. From and after the date hereof, whenever the word "Lessee" is used in the Lease it shall mean the Transferee except where used in reference to Excluded Obligations. For the purposes of this Agreement, "Excluded Obligations" means any liability or obligation of the Transferor either (a) pursuant to or under any Section of the Lease accruing with respect to, arising in or relating to any time from September 1, 1976 to but excluding November 1, 1983 or (b) pursuant to or under Section 2, 3, 4, 5, 8, 12, 20, 21, or 24 of the**

Lease accruing with respect to, arising in or relating to any time on or prior to the date hereof or payable by reason of any act, event, circumstance, or omission occurring on or existing on or prior to the date hereof, whether known or unknown, contingent or otherwise, as of the date hereof.

3. Discharge of Transferor. Owner releases and discharges Transferor from all of Transferor's obligations and liabilities (excluding Excluded Obligations), and Transferor agrees to relinquish all rights (excluding rights related to Excluded Obligations), under the Lease. Owner accepts the substitution of Transferee for Transferor under the Lease and agrees to continue to be bound under the Lease as if Transferee was originally named as "Lessee" under the Lease.

4. Effect of Lease; Termination of Sublease.

(a) This Agreement shall effect no change on the rights and obligations of the parties hereto under the Lease other than substituting the Transferee for the Transferor as above provided.

(b) Transferor and Transferee agree that the Sublease is hereby terminated.

5. Consent to Novation. The parties consent to the transactions contemplated by this Agreement in reliance upon the representations, warranties, terms and conditions contained herein.

6. Representations and Warranties of Transferor. Transferor represents and warrants to Transferee and Owner:

**(a) Transferor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has the requisite corporate power and authority to enter into and perform its obligations under this Agreement.**

**(b) The execution and delivery by Transferor of this Agreement and the performance by Transferor of its obligations hereunder (i) have been duly authorized by all necessary corporate action on the part of Transferor, (ii) do not require any stockholder approval, or any approval or consent not already obtained of any trustee or holder of any indebtedness or obligations of Transferor, and (iii) do not contravene any law, governmental rule, regulation, judgment or order applicable to or binding on Transferor or any of its properties, or the Articles of Incorporation or Bylaws of Transferor, or contravene the provisions of, or constitute a default under, or result in the creation of any lien upon the Units or the Lease under any indenture, mortgage, bank credit agreement, note or bond purchase agreement, lease, license or other agreement or instrument to which Transferor is a party or by which Transferor or any of its properties is bound.**

**(c) Except for registrations or filings with the Interstate Commerce Commission, the Association of American Railroads (AAR) and the Registrar General of Canada, the execution and delivery by Transferor of this Agreement and the performance by Transferor of its obligations hereunder do not require the consent, license, approval, or authorization of, or registration or filing with, or the taking of any other action with respect to, any governmental authority, bureau, or agency.**

**(d) This Agreement has been duly executed and delivered and is the legal, valid and binding obligation of Transferor, enforceable against Transferor in accordance with its terms, subject to the affect of bankruptcy, insolvency, reorganization, receivership, moratorium and other similar laws affecting the rights**

**and remedies of creditors generally and subject to the affect of general principles of equity, whether applied by a court of law or equity.**

**(e) There are no legal or governmental investigations, actions, suits or proceedings pending, or to the actual knowledge of Transferor, threatened against Transferor or the Units before any court, administrative agency or tribunal which, if determined adversely, would individually or in the aggregate, materially adversely affect the ability of Transferor to perform its obligations under this Agreement or materially adversely affect the Units.**

**(f) The Units are free and clear of all liens, claims and encumbrances arising by, through and under the Transferor except as permitted by the Lease.**

**(g) The Lease is in full force and effect and has not been modified, amended or supplemented and there exist no Events of Default attributable to any act or omission of Transferor except for the Event of Default arising from Transferor's failure to comply with Section 12 of the Lease relating to the use of the Units in Canada by Transferee under the Sublease.**

**(h) The Units are not subject to any contract, agreement or understanding, whether written or oral, which provides for any remarketing, residual sharing or similar arrangement entered into by Transferor which would be binding upon or enforceable against Transferee, Owner, the Units, or any sale, lease or disposition of any thereof.**

**(i) Transferor has not prepaid any amounts of rent under the lease and has not given any notice of its intention to voluntarily terminate the Lease with respect to any of the Units pursuant to Section 19 of the Lease.**

**(j) No undisclosed Casualty Occurrence has occurred with respect to any of the Units as of the date hereof.**

**7. Representations and Warranties of Transferee. Transferee represents and warrants to Transferor and Owner:**

**(a) Transferee is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has the requisite corporate power and authority to enter into and perform its obligations under this Agreement and the Lease.**

**(b) The execution and delivery by Transferee of this Agreement and the performance by Transferee of its obligations hereunder and under the Lease (i) have been duly authorized by all necessary corporate action on the part of Transferee, (ii) do not require any stockholder approval, or approval or consent not already obtained of any trustee or holder of any indebtedness or obligations of Transferee, and (iii) do not contravene any law, governmental rule, regulation, judgment or order applicable to or binding on Transferee or any of its properties, or the Articles of Incorporation or Bylaws of Transferee, or contravene the provisions of, or constitute a default under, or result in the creation of any lien upon the Units or the Lease under any indenture, mortgage, bank credit agreement, note or bond purchase agreement, lease, license or other agreement or instrument to which Transferee is a party or by which Transferee or any of its properties is bound.**

**(c) Except for registrations or filings with the Interstate Commerce Commission, the Association of American Railroads (AAR) and the Registrar General of Canada, the execution and delivery by Transferee of this Agreement and the performance by Transferee of its obligations hereunder do not require the consent, license, approval, or authorization of, or registration or filing with, or the taking of any**



**other action with respect to, any governmental authority, bureau, or agency. The recordation of new identification marks with the Association of American Railroads (AAR) shall be completed on or before December 31, 1995.**

**(d) This Agreement has been duly executed and delivered and each of this Agreement and the Lease as assumed by Transferee is the legal, valid and binding obligation of Transferee, enforceable against Transferee in accordance with its terms, subject to the affect of bankruptcy, insolvency, reorganization, receivership, moratorium and other similar laws affecting the rights and remedies of creditors generally and subject to the affect of general principles of equity, whether applied by a court of law or equity.**

**(e) There are no legal or governmental investigations, actions, suits or proceedings pending, or to the actual knowledge of Transferee, threatened against Transferee or the Units before any court, administrative agency or tribunal which, if determined adversely, would individually or in the aggregate, materially adversely affect the ability of Transferee to perform its obligations under this Agreement or the Lease or materially adversely affect the Units.**

**(f) The Units are free and clear of all liens, claims and encumbrances arising by, through or under the Transferee except as permitted by the Sublease.**

**(g) Immediately prior to the execution of this Agreement, the Sublease is in full force and effect and has not been modified, amended or supplemented and there exist no Events of Default under the Sublease or Lease attributable to any act or omission of Transferee except for the Event of Default arising from the failure to comply with Section 12 of the Lease relating to the use of the Units in Canada by Transferee, which Event of Default Transferee is diligently working to cure.**

**(h) The Units are not subject to any contract, agreement, or understanding, whether written or oral, which provides for any remarketing, residual sharing or similar arrangement entered into by Transferee which would be binding upon or enforceable against Transferor, Owner, the Units, or any sale, lease or disposition of any thereof.**

**(i) Transferee has not prepaid any amounts of rent under the Sublease and has not given any notice of its intention to voluntarily terminate the Sublease with respect to any of the Units pursuant to Section 19 of the Lease which is incorporated by reference in the Sublease.**

**(j) No undisclosed Casualty Occurrence has occurred with respect to any of the Units as of the date hereof.**

**8. Representations and Warranties of Owner. Owner represents and warrants to Transferor and Transferee:**

**(a) Owner is a corporation duly organized, validly existing and in good standing under the laws of the State of New York and has the requisite corporate power and authority to enter into and perform its obligations under this Agreement and the Lease.**

**(b) The execution and delivery by Owner of this Agreement and the performance by Owner of its obligations hereunder (i) have been duly authorized by all necessary corporate action on the part of Owner, (ii) do not require any stockholder approval, or any approval or consent not already obtained of any trustee or holder of any indebtedness or obligations of Owner, and (iii) do not contravene any law, governmental rule, regulation, judgment or order applicable to or binding on Owner or any of its properties, or the Articles of Incorporation or Bylaws of Owner,**

or contravene the provisions of, or constitute a default under, or result in the creation of any lien upon the Units or the Lease under any indenture, mortgage, bank credit agreement, note or bond purchase agreement, lease, license or other agreement or instrument to which Owner is a party or by which Owner or any of its properties is bound.

(c) Except for registrations or filings with the Interstate Commerce Commission, the Association of American Railroads (AAR) and the Registrar General of Canada, the execution and delivery by Owner of this Agreement and the performance by Owner of its obligations hereunder do not require the consent, license, approval, or authorization of, or registration or filing with, or the taking of any other action with respect to, any governmental authority, bureau, or agency.

(d) This Agreement has been duly executed and delivered and each of this Agreement and the Lease is the legal, valid and binding obligation of Owner, enforceable against Owner in accordance with its terms, subject to the affect of bankruptcy, insolvency, reorganization, receivership, moratorium and other similar laws affecting the rights and remedies of creditors generally and subject to the affect of general principles of equity, whether applied by a court of law or equity.

(e) There are no legal or governmental investigations, actions, suits or proceedings pending, or to the actual knowledge of Owner, threatened against Owner or the Units before any court, administrative agency or tribunal which, if determined adversely, would individually or in the aggregate, materially adversely affect the ability of Owner to perform its obligations under this Agreement or the Lease or materially adversely affect the Units.

(f) The Units are free and clear of all liens, claims and encumbrances arising by, through or under the Owner.

(g) The Lease is in full force and effect and has not been modified, amended or supplemented and there exist no Events of Default under the Lease attributable to any act or omission of Owner.

(h) Owner has not entered into any contract, agreement, or understanding, whether written or oral, which provides for any remarketing, residual sharing or similar arrangement which would be binding upon or enforceable against Transferor, Transferee, the Units, or any sale, lease or disposition of any thereof.

(i) To the best knowledge of Owner, neither Transferor nor Transferee are in default under the Lease, except as noted in paragraphs 6(g) and 7(g) of this Agreement.

(j) Owner covenants that, upon the payment of rent and observance and performance by Transferee of all the terms, covenants and conditions of the Lease, Transferee may peaceably and quietly enjoy the Equipment, subject nevertheless to the terms and conditions of the Lease.

9. Acknowledgment of the Owner. Each of the Transferor and the Transferee hereby acknowledge that The CIT Group / Equipment Financing, Inc. is the owner of the Units and each, to the extent of its obligations under the Lease as novated hereby, confirms that The CIT Group / Equipment Financing, Inc. will be deemed to be and treated as the "Owner" for all purposes under the Lease and will be entitled to the benefits of all indemnities and obligations granted in favor of the "Owner" under the Lease as and from 3:00 p.m., May 31, 1995. Owner agrees to cooperate with Transferee in Transferee's cure of the Event of Default described in Sections 6(g) and 7(g) hereof by providing such reasonable information about Owner and executing and delivering such documents or instruments as Transferee, or its

counsel, may reasonably request so as to protect the right, title and interest of Owner in the Units in Canada (or any Province or Territory thereof).

10. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11. Successors and Assigns. The terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

12. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of New York without regard to its conflict of laws doctrine.

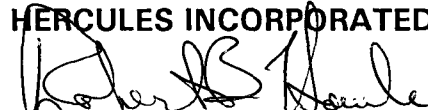
13. **Further Assurances.** Each party agrees that from time to time after the date hereof, it shall execute and deliver or cause to be executed and delivered such instruments, documents and papers, and take all such further action as may be reasonably required in order to consummate more effectively the purposes of this Agreement and to implement the transactions contemplated hereby.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the day and year first above written.

**TRANSFEROR:**  
**HERCULES INCORPORATED**

By:

Title:

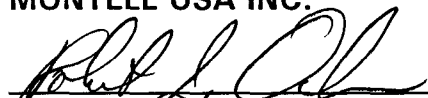
  
Dir. DS + MSD

cm  
JS.

**TRANSFeree:**  
**MONTELL USA INC.**

By:

Title:

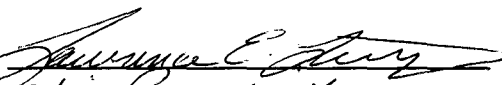
  
SR Vice Pres

Drick  
J.P.

**OWNER:**  
**THE CIT GROUP / EQUIPMENT  
FINANCING, INC.**

By:

Title:

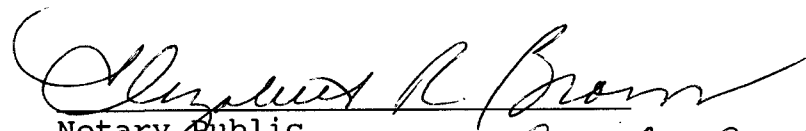
  
Vice President

b:\cjm\montell.agt

STATE OF DELAWARE           )  
                                      )  
COUNTY OF NEW CASTLE       )   ss.:

On this 25th day of July, 1995, personally appeared before me, Robert J. Ockun, who being by me duly sworn, did say that he is a Senior Vice President of Montell USA Inc., a Delaware corporation, that the foregoing instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

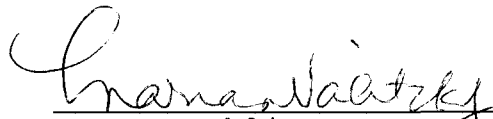
  
Notary Public  
My Commission Expires: *April 29, 1996*

ELIZABETH R. BROWN  
NOTARY PUBLIC  
STATE OF DELAWARE  
MY COMMISSION EXPIRES APRIL 29, 1996

STATE OF NEW YORK     )  
                              ) ss.:  
COUNTY OF NEW YORK    )

On this 7th day of August, 1995, personally appeared before me, Lawrence Littlefield, who being by me duly sworn, did say that he is a Vice President of THE CIT GROUP/EQUIPMENT FINANCING, INC., a New York corporation, and that the foregoing instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

  
\_\_\_\_\_  
Notary Public  
My Commission Expires:                     

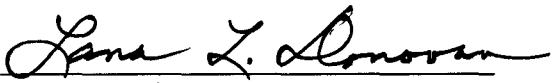
**MARIAN VALITZKY**  
Notary Public, State of New York  
No. 61-4991572  
Qualified in New York County  
Commission Expires 2/3/96



STATE OF DELAWARE       )  
  ) ss.:  
COUNTY OF NEW CASTLE   )

On this 25<sup>th</sup> day of August, 1995, personally appeared before me, Robert B. Howle, who being by me duly sworn, did say that he is Director, Distribution, Supply & Management Services, of HERCULES INCORPORATED, a Delaware corporation, that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)



Notary Public

My Commission Expires:

My commission expires July 10, 1997

SCHEDULE A

DESCRIPTION OF ITEMS OF EQUIPMENT

Description,  
Mark and Numbers of  
Equipment

193 100-ton, 5,250 cubic foot lined covered hopper cars, bearing numbers and car marks within the range of HPCX 59000-59199, inclusive, and to be remarked within the range of MLLX 59000-59199, inclusive (but excluding in each case numbers 59002, 59006, 59009, 59049, 59085, 59117, 59155); manufactured and delivered new by ACF Industries from September, 1976 to January, 1977.